

in the lawsuit until Retailer or Distributor assumes the requested defense and/or indemnification. In the event that Retailer and Distributor agrees to assume the defense and/or indemnification of a lawsuit, it shall have the right to engage and direct counsel of its own choosing and, except in cases where the request is made pursuant to Section XII D above, shall have the obligations to reimburse the requesting party for all reasonable costs and expenses including actual attorneys' fees, incurred prior to such assumption. The indemnifying party shall have the right and responsibility to make all case decisions including whether and when to settle and how much money to pay.

**XIII. NOTICE OF BREACH OR FAILURE TO ACT IN GOOD FAITH**

In the interest of maintaining a harmonious relationship between Distributor and Retailer, if the Retailer believes that Distributor has breached this Agreement or has failed to act in good faith toward Retailer, Retailer shall report its belief and the bases therefore promptly, in writing, to the President of Distributor. For the purposes of this Section XIII, the term "good faith" shall mean Distributor and its representatives acting in a fair, honest, commercially reasonable, equitable, and impartial manner toward Retailer. It is the intention of the parties that the purpose of the requirement of such notification by Retailer is to afford Distributor sufficient opportunity to consider the claim of Retailer and if, in the sole determination of Distributor, such claim is found to be meritorious, to undertake such measures as may be necessary to correct the condition of which Retailer complains.

**XIV. GENERAL PROVISIONS**

**A. NOTICES**

Except as otherwise specifically provided herein, any notice required to be given by either party to the other shall be in writing, shall be delivered personally or by mail to the party at its address as stated in this Agreement, and shall be effective upon receipt by hand delivery or upon mailing.

**B. IMPLIED WAIVERS**

The failure of either party at any time to require performance by the other party of any provision herein shall in no way affect the right of such party to require such performance at any time thereafter. The waiver by any party of a breach of any provision herein shall not constitute a waiver of any succeeding breach of the same or any other provision or constitute a waiver of the provision itself.

**C. SOLE AGREEMENT OF THE PARTIES**

This Agreement terminates and supersedes all prior agreements between the parties relating to the subject matters covered herein. There are no prior agreements or understandings, either oral or written, between the parties affecting this Agreement or relating to the sale or service of Saturn Motor Vehicle Products or Prior Saturn Motor Vehicles, except as otherwise specifically provided for or referred to in this Agreement. Retailer acknowledges that no representations or statements other than those expressly set forth therein were

made by Distributor or any officer, employee, agent, or representative thereof, or were relied upon by Retailer in entering into this Agreement

**D. RETAILER NOT AN AGENT OR REPRESENTATIVE**

Retailer is an independent business. This Agreement does not constitute Retailer the agent or legal representative of Distributor or Manufacturer. Retailer is not granted any express or implied right or authority to assume or create any obligation on behalf of or in the name of Distributor or the Manufacturer or to bind Distributor or Manufacturer in any manner whatsoever. No fiduciary obligations are created by this Agreement.

**E. ASSIGNMENT OF RIGHTS OR DELEGATION OF DUTIES**

This is a personal service agreement and may not be assigned or sold in whole or in part, directly or indirectly, voluntarily or by operation of law, by the Retailer without the prior written consent of Distributor. Any attempted transfer, assignment or sale without Distributor's prior written consent will be void and not binding upon Distributor.

**F. NO FRANCHISE FEE**

Retailer warrants that it has paid no fee, nor has it provided any goods or services in lieu of same, to Distributor in consideration of entering into this Agreement. The sole consideration for Distributor's entering into or continuing this Agreement is Owner's and Retailer Operator's ability, integrity, assurance of personal services, and expressed intention of deal fairly and equitably with Distributor and the public.

**G. BENEFIT**

This Agreement is entered into by and between Distributor and Retailer for their sole and mutual benefit. Neither this Agreement nor any specific provision contained in it is intended or shall be construed to be for the benefit of any third party.

**H. MICHIGAN LAW**

This Agreement shall be deemed to have been entered into in the State of Michigan, and all questions concerning the validity, interpretation, or performance of any of its terms, or of any contractual rights or obligations of the parties hereto, shall be governed by and resolved in accordance with the internal laws of the State of Michigan, including, without limitation, its statutes of limitations.

**XV. DEFINITIONS**

As used in this Agreement, the parties agree that the following terms shall be defined exclusively as set forth below.

- A. **APPROVED LOCATION(S):** The location(s) and any facilities thereon designated in Paragraph E and the Final Paragraph of this Agreement that Distributor has approved for the Retailer Operation(s) specified therein.
- B. **COMPETITIVE VEHICLES:** Those new vehicles that are considered by Distributor to be directly competitive with Saturn USA New Motor Vehicles
- C. **GENUINE SATURN USA MOTOR VEHICLE PARTS AND ACCESSORIES:** All Saturn parts and accessories manufactured by or on behalf of Distributor or the Manufacturer and such other parts and accessories specifically approved by Distributor and Manufacturer for use in servicing Saturn Motor Vehicles
- D. **MANUFACTURER:** General Motors Corporation, New GM or its affiliates, successors, predecessors or any manufacturer which has entered into an agreement with Distributor to manufacture and produce Saturn Motor Vehicle Products for sale within the United States
- E. **OWNER:** The persons identified in the Final Paragraph of this Agreement.
- F. **PRIOR SATURN MOTOR VEHICLES:** All Saturn brand motor vehicles sold to Retailer prior to the date of this Retailer Agreement for which Distributor is authorized by the Manufacturer to authorize Retailer to provide maintenance and repair service.
- G. **RETAILER:** The natural person or entity that executes the Agreement and is authorized by Distributor to sell and service Saturn Motor Vehicle Products as defined herein.
- H. **RETAIL FACILITIES:** The buildings, improvements, fixtures and equipment situated at the Approved Location(s) and identified in Paragraph E and the Final Paragraph of this Agreement
- I. **RETAIL OPERATIONS:** All Retailer functions contemplated by this Agreement including, without limitation, sale and servicing of Saturn Motor Vehicle Products, use and display of Saturn Marks and Saturn Motor Vehicle Products, rental and leasing of Saturn USA New Motor Vehicles, sale of pre-owned Saturn motor vehicles, body shop work, financing or insurance services and any other activities undertaken by Retailer in connection with Saturn Motor Vehicle Products, whether conducted directly or indirectly by Retailer.
- J. **RETAILER OPERATOR:** The person identified in the Final Paragraph of this Agreement.

- K. **SATURN MOTOR VEHICLE PRODUCTS:** All Saturn USA New Motor Vehicles and Genuine Saturn USA Motor Vehicle Parts and Accessories that Distributor sells to Retailer for resale.
- L. **SATURN MOTOR VEHICLES:** (i) All Saturn USA New Motor Vehicles; and (ii) all Prior Saturn Motor Vehicles.
- M. **SATURN OR SATURN MARKS:** The various Saturn trademarks, trade dress service marks, names, logos, and designs that Retailer is authorized to use in the sale and servicing of Saturn Motor Vehicle Products
- N **SATURN USA NEW MOTOR VEHICLES:** All Saturn brand new and unused motor vehicles that Distributor sells to Saturn motor vehicle Retailers in the United States of America

**XVI. ADDITIONAL PROVISIONS**

In consideration of Distributor's agreement to appoint Retailer as a Saturn Motor Vehicle Retailer, Retailer further agrees

All terms and conditions in this Agreement inconsistent with the laws and rules of the State in which Retailer's Saturn Retail Facilities specified in this Agreement are located are of no force and effect.

If any provision herein contravenes the laws or regulations of any state or other jurisdiction wherein this agreement is to be performed, or denies access to the procedures, forums, or remedies provided for by such laws or regulations, such provision shall be deemed to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force.

Distributor reserves the right to amend the terms of this Agreement or to add Amendments or Addendums relating to the matters set forth herein

GMMS 1011  
11 00 USA

# **Standard Provisions**

## **Dealer Sales and Service Agreement**

**GENERAL MOTORS CORPORATION**

## Table of Contents

PURPOSE OF AGREEMENT	1	ARTICLE 12 CHANGES IN MANAGEMENT AND OWNERSHIP	14
ARTICLE 1 APPOINTMENT AS AUTHORIZED DEALER	1	12.1 Succession Rights Upon Death or Incapacity	14
ARTICLE 2 DEALER OPERATOR	2	12.1.1 Successor Addendum	
ARTICLE 3 DEALER OWNER	2	12.1.2 Absence of Successor Addendum	
ARTICLE 4 AUTHORIZED LOCATIONS	2	12.1.3 Successor Dealer Requirements	15
4.1 Dealer Network Planning	2	12.1.4 Term of New Dealer Agreement	15
4.2 Area of Primary Responsibility	3	12.1.5 Limitation on Offers	15
4.3 Establishment of Additional Dealers	3	12.1.6 Cancellation of Addendum	15
4.4 Facilities	3	12.2 Other Changes in Ownership or Management	15
4.4.1 Location	3	12.3 Right of First Refusal to Purchase	16
4.4.2 Change in Location or Use of Premises	4	12.3.1 Creation and Coverage	16
4.4.3 Size	4	12.3.2 Purchase Price and Other Terms of Sale	17
4.4.4 Dealership Image and Design	4	(a) Bona Fide Agreement	17
4.4.5 Dealership Equipment	5	(b) Absence of a Bona Fide Agreement	17
ARTICLE 5 DEALER'S RESPONSIBILITY TO PROMOTE, SELL, AND SERVICE PRODUCTS	5	12.3.3 Consummation	17
5.1 Responsibility to Promote and Sell	5	12.3.4 Assignment	17
5.2 Responsibility to Service	6	12.3.5 Transfer Involving Family Members and Dealer Management	17
5.3 Customer Satisfaction	7	12.3.6 Expenses	18
5.4 Business Planning	7	ARTICLE 13 BREACHES AND OPPORTUNITY TO REMEDY	18
5.5 Dealer Council	7	13.1 Certain Acts or Events	18
5.6 Electronic Communications, Data Interchange, and Electronic Transactions	8	13.2 Failure of Performance by Dealer	19
ARTICLE 6 SALE OF PRODUCTS TO DEALERS	8	ARTICLE 14 TERMINATION OF AGREEMENT	20
6.1 Sale of Motor Vehicles to Dealer	8	14.1 By Dealer	20
6.2 Sale of Parts and Accessories to Dealer	9	14.2 By Agreement	20
6.3 Prices and Other Terms of Sale	9	14.3 Failure to be Licensed	20
6.3.1 Motor Vehicles	9	14.4 Incapacity of Dealer Operator	20
6.3.2 Parts and Accessories	9	14.5 Acts or Events	20
6.4 Inventory	9	14.6 Reliance on Any Applicable Termination Provision	21
6.4.1 Motor Vehicle Inventory	9	14.7 Transactions After Termination	21
6.4.2 Parts and Accessories	9	14.7.1 Effect on Orders	
6.5 Warranties on Products	10	14.7.2 Termination Delivens	
ARTICLE 7 SERVICE OF PRODUCTS	10	14.7.3 Effect of Transactions After Termination	
7.1 Service for Which General Motors Pays	10	ARTICLE 15 TERMINATION ASSISTANCE	22
7.1.1 New Motor Vehicle Pre-Delivery Inspections and Adjustments	10	15.1 Deferral of Effective Date	22
7.1.2 Warranty and Special Policy Repairs	10	15.2 Purchase of Personal Property	22
7.1.3 Campaign Inspections and Corrections	10	15.2.1 General Motors Obligations	22
7.1.4 Payment for Pre-Delivery Adjustments, Warranty, Campaign and Transportation Damage Work	11	15.2.2 Dealer's Responsibilities	23
7.2 Parts, Accessories and Body Repairs	11	15.2.3 Payment	23
7.2.1 Warranty and Policy Repairs	11	15.2.4 Replacement Dealer	23
7.2.2 Representations and Disclosures as to Parts and Accessories	11	15.3 Assistance on Premises	24
7.2.3 Body Repairs	11	15.3.1 General Motors Obligation	24
7.2.4 Tools and Equipment	11	15.3.2 Owned Premises	24
ARTICLE 8 TRAINING	12	15.3.3 Leased Premises	24
ARTICLE 9 REVIEW OF DEALER'S SALES PERFORMANCE	12	15.3.4 Rent and Price	25
ARTICLE 10 CAPITALIZATION	13	15.3.5 Limitations on Obligation to Provide Assistance	25
10.1 Net Working Capital	13	ARTICLE 16 DISPUTE RESOLUTION PROCESS	25
10.2 Wholesale Floorplan	13	ARTICLE 17 GENERAL PROVISIONS	26
ARTICLE 11 ACCOUNTS AND RECORDS	13	17.1 No Agent or Legal Representative Status	26
11.1 Uniform Accounting System	13	17.2 Responsibility for Operations	26
11.2 Application for Payment	13	17.3 Taxes	26
11.3 Examination of Accounts and Records	14	17.4 Indemnification by General Motors	26
11.4 Confidentiality of Dealer Data	14	17.5 Trademarks and Service Marks	27
		17.6 Notices	28
		17.7 No Implied Waivers	28
		17.8 Assignment of Rights or Delegation of Duties	28
		17.9 No Third Party Benefit Intended	28
		17.10 Accounts Payable	--
		17.11 Sole Agreement of Parties	
		17.12 Applicable Law Agreement	
		17.13 Superseding Dealer Agreements	29
		GLOSSARY	30

## **Standard Provisions**

The following Standard Provisions are part of General Motors Dealer Sales and Service Agreement(s) (Form GMMS 1012)

### **PURPOSE OF AGREEMENT**

The purpose of this Agreement is to promote a relationship between General Motors and its Dealers which encourages and facilitates cooperation and mutual effort to satisfy customers, and permits General Motors and its dealers to fully realize their opportunities for business success. General Motors has established a network of authorized dealers operating at approved locations to effectively sell and service its Products and to build and maintain consumer confidence and satisfaction in Dealer and General Motors. Consequently, General Motors relies upon each Dealer to provide appropriate skill, capital, equipment, staff and facilities to properly sell, service, protect the reputation, and satisfy the customers of General Motors Products in a manner that demonstrates a caring attitude toward those customers. At the same time, Dealer relies upon General Motors to provide sales and service support and to continually strive to enhance the quality and

competitiveness of its Products. This mutual dependence requires a spirit of cooperation, trust and confidence between General Motors and its dealers. To facilitate attainment of cooperation, trust and confidence, and to provide General Motors with the benefit of dealer advice regarding many decisions which affect dealer business operations, General Motors has established mechanisms to obtain dealer input in the decision making process.

This Agreement (i) authorizes Dealer to sell and service General Motors Products and represent itself as a General Motors Dealer, (ii) states the terms under which Dealer and General Motors agree to do business together, (iii) states the responsibilities of Dealer and General Motors to each other and to customers, and (iv) reflects the mutual dependence of the parties in achieving their business objectives.

### **ARTICLE 1. APPOINTMENT AS AUTHORIZED DEALER**

General Motors appoints Dealer as a non-exclusive dealer of General Motors Products. Dealer has the right to buy Products and the

obligation to market and service those Products in accordance with this Agreement and related documents.

## ARTICLE 2. DEALER OPERATOR

This is a Personal Services Agreement, entered into in reliance on the qualifications, integrity and reputation of Dealer Operator identified in Paragraph Third, and on Dealer's assurance that Dealer Operator will provide personal services by exercising full managerial authority over Dealership Operations. Dealer Operator will have an unencumbered ownership interest in Dealer of at least 15 percent at all times. A Dealer Operator must be a competent business person, an effective manager, must have

demonstrated a caring attitude toward customers, and should have a successful record as a merchandiser of automotive products and services or otherwise have demonstrated the ability to manage a dealership. The experience necessary may vary with the potential represented by each dealer location. Although this Agreement is entered into in reliance on the personal services of the Dealer Operator, the Dealer entity specified in this Agreement is the only party to this Agreement with General Motors.

## ARTICLE 3. DEALER OWNER

General Motors enters into this Agreement in reliance on the qualifications, integrity and reputation of dealer owner(s) identified in the Dealer Statement of Ownership. General Motors and Dealer agree

each dealer owner will continue to own, both of record and beneficially, the percentage stated in the Dealer Statement of Ownership, unless a change is made in accordance with Article 12.

## ARTICLE 4. AUTHORIZED LOCATIONS

### *4.1 Dealer Network Planning*

Because General Motors distributes its Products through a network of authorized dealers operating from approved locations, those dealers must be appropriate in number, located properly, and have proper facilities to represent and service General Motors Products competitively and to permit each dealer the opportunity to achieve a reasonable return on investment if it fulfills its obligations under its Dealer Agreement. Through such a dealer network, General Motors can maximize the convenience of customers in purchasing Products and having them

served. As a result, customers, dealers, and General Motors all benefit.

To maximize the effectiveness of its dealer network, General Motors agrees to monitor marketing conditions and strive, to the extent practicable, to have dealers appropriate in number, size and location to achieve the objectives stated above. Such marketing conditions include General Motors sales and registration performance, present and future demographic and economic considerations, competitive dealer networks, the



ability of General Motors existing dealers to achieve the objectives stated above, the opportunities available to existing dealers, the alignment of Line-Makes, General Motors dealer network plan, and other appropriate circumstances

#### ***4.2 Area of Primary Responsibility***

Dealer is responsible for effectively selling, servicing and otherwise representing General Motors Products in the Area designated in a Notice of Area of Primary Responsibility. General Motors retains the right to revise Dealer's Area of Primary Responsibility at General Motors sole discretion consistent with dealer network planning objectives. If General Motors determines that marketing conditions warrant a change in Dealer's Area of Primary Responsibility, it will advise Dealer in writing of the proposed change, the reasons for it, and will consider any information the Dealer submits. Dealer must submit such information in writing within 30 days of receipt of notice of the proposed change. If General Motors thereafter decides the change is warranted, it will issue a revised Notice of Area of Primary Responsibility.

#### ***4.3 Establishment of Additional Dealers***

General Motors reserves the right to appoint additional dealers but General Motors will not exercise this right without first analyzing dealer network planning considerations with respect to the Line-Make under consideration. Prior to establishing an additional same Line-Make dealer within Dealer's Area of Primary Responsibility, General Motors will advise Dealer in writing and give Dealer thirty days

to present relevant information before General Motors makes a final decision. If requested by Dealer within the thirty days, General Motors will extend the time for an additional thirty days if reasonably necessary for Dealer to obtain and submit relevant information. General Motors will advise Dealer of the final decision concerning the establishment of an additional dealer, which will be made solely by General Motors pursuant to its business judgment. Nothing in this Agreement is intended to require Dealer's consent to the establishment of an additional dealer, nor is this Agreement intended to give Dealer a right to object to the establishment of a different Line-Make.

Neither the appointment of a dealer at or within three miles of a former dealership location as a replacement for the former dealer nor the relocation of an existing dealer point will be considered the establishment of an additional Dealer for purposes of this Article 4.3. Such events are within the sole discretion of General Motors pursuant to its business judgment.

#### ***4.4 Facilities***

##### ***4.4.1 Location***

Dealer agrees to conduct Dealership Operations only from the approved location(s) within its Area of Primary Responsibility. The Location and Premises Addendum identifies Dealer's approved location(s) and facilities ("Premises"). If more than one location is approved, Dealer agrees to conduct from each location only those Dealership Operations authorized in the Addendum for such location.

#### *4.4.2 Change in Location or Use of Premises*

If Dealer wants to make any change in location(s) or Premises or in the uses previously approved for those Premises, Dealer will give General Motors written notice of the proposed change, together with the reasons for the proposal, for General Motors evaluation and final decision in light of dealer network planning considerations. No change in location or in the use of Premises, including addition of any other vehicle lines, will be made without General Motors prior written authorization pursuant to its business judgment.

Before General Motors requires any changes in Premises, it will consult with Dealer, indicate the rationale for the change, and solicit Dealer's views on the proposal. If, after such review with Dealer, General Motors determines a change in Premises or location is appropriate, the Dealer will be allowed a reasonable time to implement the change. Any such changes will be reflected in a new Location and Premises Addendum or other written agreement executed by Dealer and General Motors.

Nothing herein is intended to require the consent or approval of any dealer to a proposed relocation of any other dealer.

#### *4.4.3 Size*

Dealer agrees to provide Premises at its approved location(s) that will promote the effective performance and conduct of Dealership Operations, and General Motors image and goodwill. Consistent with General Motors dealer network planning

objectives and General Motors interest in maintaining the stability and viability of its dealers, Dealer agrees that its facilities will be sized in accordance with General Motors requirements for that location.

General Motors agrees to establish and maintain a clearly stated policy for determining reasonable dealer facility space requirements and to periodically re-evaluate those requirements to ensure that they continue to be reasonable.

#### *4.4.4 Dealership Image and Design*

The appearance of Dealer's Premises is important to the image of Dealer and General Motors, and can affect the way customers perceive General Motors Products and its dealers generally. Dealer therefore agrees that its Premises will be properly equipped and maintained, and that the interior and exterior retail environment and signs will comply with any reasonable requirements General Motors may establish to promote and preserve the image of General Motors and its dealers.

General Motors will monitor developments in automotive and other retail industries to ensure that General Motors image and facility requirements are responsive to changes in the marketing environment.

General Motors will take into account existing economic and marketing conditions and consult with the appropriate dealer council in establishing such requirements.

#### **4.4.5 Dealership Equipment**

Effective performance of Dealer's responsibilities under this Agreement requires that the dealership be reasonably equipped to communicate with customers and General Motors and to properly diagnose and service Products. Accordingly, Dealer agrees to

provide for use in the Dealership Operations any equipment reasonably designated by General Motors as necessary for Dealer to perform effectively under this Agreement. General Motors will make such designations only after having consulted with the appropriate dealer council.

### **ARTICLE 5. DEALER'S RESPONSIBILITY TO PROMOTE, SELL, AND SERVICE PRODUCTS**

#### **5.1 Responsibility to Promote and Sell**

**5.1.1** Dealer agrees to effectively, ethically and lawfully sell and promote the purchase, lease and use of Products by consumers located in its Area of Primary Responsibility. To achieve this objective, Dealer agrees to

- (a) maintain an adequate staff of trained sales personnel,
- (b) explain to Product purchasers the items which make up the purchase price and provide purchasers with itemized invoices,
- (c) not charge customers for services for which Dealer is reimbursed by General Motors,
- (d) include in customer orders only equipment or accessories requested by customer or required by law, and
- (e) ensure that the customer's purchase and delivery experience are satisfactory.

If Dealer modifies or sells a modified new Motor Vehicle, or installs any equipment, accessory, recycled part or part not supplied by General Motors,

or sells any non-General Motors service contract for a Motor Vehicle, Dealer will disclose this fact on the purchase order and bill of sale, indicating that the modification, equipment, accessory or part is not warranted by General Motors or, in the case of a service contract, the coverage is not provided by General Motors or an affiliate.

**5.1.2** Dealer located in the United States is authorized to sell new Motor Vehicles only to customers located in the United States. Dealer agrees that it will not sell new Motor Vehicles for resale or principal use outside the United States. Dealer also agrees not to sell any new Motor Vehicles which were not originally manufactured for sale and distribution in the United States. For this section, United States includes the fifty states and the District of Columbia.

**5.1.3** Dealer located in Puerto Rico or the US Virgin Islands is authorized to sell new Motor Vehicles only to customers located in Puerto Rico or the US Virgin Islands respectively. Dealer in Puerto Rico or the US Virgin Islands agrees that it will not

sell new Motor Vehicles to customers located outside Puerto Rico or the US Virgin Islands respectively, or to customers for resale or principal use outside of Puerto Rico or the US Virgin Islands. Dealer agrees not to sell any new Motor Vehicles which were not originally manufactured for sale and distribution in Puerto Rico or the US Virgin Islands respectively.

**5.1.4** It is General Motors policy not to sell or allocate new Motor Vehicles to dealers for resale to persons or parties (or their agents) engaged in the business of reselling, brokering (including but not limited to buying services) or wholesaling Motor Vehicles. The dealer distribution organizations that General Motors has established in the United States, Puerto Rico and US Virgin Islands are best suited for the distribution of Motor Vehicles in the United States, Puerto Rico and the US Virgin Islands respectively, and are in the best position to arrange for the proper performance of Motor Vehicle warranty repairs, safety campaigns and inspections, pre-delivery inspections, and ongoing maintenance and compliance with government requirements. Therefore, unless otherwise authorized in writing by General Motors, Dealer agrees that this Agreement authorizes Dealer to purchase Motor Vehicles only for resale to customers for personal use or primary business use other than resale. Dealer is not authorized by this Agreement to directly or indirectly sell Motor Vehicles to persons or parties (or their agents) engaged in the business of reselling, brokering (including but not limited to buying services) or wholesaling of Motor Vehicles. Nothing in this Article 5.1.4 is intended to restrict Dealer from selling Motor Vehicles to other General Motors

dealers of the same Line-Make in the same country or territory.

**5.1.5** General Motors will conduct general advertising programs to promote the sale of Products for the mutual benefit of General Motors and Dealers. General Motors will make available to Dealer advertising and sales promotion materials from time to time and advise Dealer of any requirements or applicable charges.

**5.1.6** Dealer agrees to advertise and conduct promotional activities that are lawful and enhance the reputation of Dealer, General Motors and its Products. Dealer will not advertise or conduct promotional activities in a misleading or unethical manner, or that is harmful to the reputation of Dealer, General Motors, or its Products.

## **5.2 Responsibility to Service**

**5.2.1** Dealer agrees to maximize customer satisfaction by providing courteous, convenient, prompt, efficient and quality service to owners of Motor Vehicles, regardless of from whom the Vehicles were purchased. All service will be performed and administered in a professional manner and in accordance with all applicable laws and regulations, this Agreement, and the Service Policies and Procedures Manual, as amended from time to time.

**5.2.2** Dealer agrees to maintain an adequate service and parts organization as recommended by General Motors, including a competent, trained service and parts manager(s),

trained service and parts personnel and, where service volume or other conditions make it advisable, a consumer relations manager

5.2.3 Dealer and General Motors will each provide the other with such information and assistance as may reasonably be requested by the other to facilitate compliance with applicable laws, regulations, investigations and orders relating to Products

5.2.4 To build and maintain consumer confidence in, and satisfaction with, Dealer and General Motors, Dealer will comply with General Motors procedures for the investigation and resolution of Product-related complaints

5.2.5 General Motors will make available to Dealer current service and parts manuals, bulletins, and technical data publications relating to Motor Vehicles

### 5.3 *Customer Satisfaction*

Dealer and General Motors recognize that appropriate care for the customer will promote customer satisfaction with General Motors Products and its dealers, which is critically important to our current and future business success. Dealer therefore agrees to conduct its operations in a manner which will promote customer satisfaction with the purchase and ownership experience. General Motors agrees to provide Dealer with reasonable support to assist Dealer's attainment of customer satisfaction

General Motors will provide Dealer with a written report at least annually pursuant to the procedures

then in effect evaluating Dealer's purchase and delivery customer satisfaction and Dealer's service customer satisfaction. The report will compare Dealer's performance to other same Line-Make dealers in the Region. General Motors will provide a written explanation of the customer satisfaction review process to Dealer

General Motors may revise the customer satisfaction evaluation process from time to time. General Motors will consult with the appropriate dealer council before making any changes

### 5.4 *Business Planning*

General Motors has established a business planning process to assist dealers. Dealer agrees to prepare and implement a reasonable business plan if requested by General Motors. General Motors agrees to provide Dealer with information specific to its dealership, and if requested, to assist Dealer in its business planning as agreed upon by Dealer and General Motors

### 5.5 *Dealer Council*

General Motors agrees to establish such dealer councils as appropriate to foster and maintain a positive business relationship between General Motors and its dealers, and to obtain dealer input in General Motors decision-making process. These councils may be established on a national, regional or local basis, and General Motors will consult with dealers in establishing or changing such dealer councils. These councils are intended to provide General Motors with the benefit of dealer advice regarding various decisions which affect dealership operations

**5.6 *Electronic Communications, Data  
Interchange, and Electronic  
Transactions***

To provide for effective and efficient communication, data interchange and electronic transactions between General Motors, its dealers, and its customers, General Motors may establish reasonable requirements for Dealer's acquisition and use of certain computer software, computer hardware, and systems in Dealership Operations, including but not limited to use involving or relating to the Internet. General Motors will take into consideration factors such as market conditions, competitive circumstances, and costs in establishing such reasonable requirements. Dealer agrees to comply with those requirements and all restrictions

and limitations applicable to such computer software, computer hardware or systems. General Motors will consult with the appropriate dealer council in establishing such requirements.

General Motors may provide Dealer from time to time certain customer information or other information or data. Dealer agrees to use such information or data only as designated by General Motors, and not to otherwise disclose such information or data without General Motors written permission unless otherwise required by law. This restriction only applies to information and data provided by General Motors to its dealers, and does not apply to data or information Dealer obtains from its customers or other sources.

**ARTICLE 6. SALE OF PRODUCTS TO DEALERS**

**6.1 *Sale of Motor Vehicles to Dealer***

General Motors will periodically furnish Dealer one or more Motor Vehicle Addenda specifying the current model types or series of new Motor Vehicles which Dealer may purchase under this Agreement. General Motors may change a Motor Vehicle Addendum by furnishing a superseding one, or may cancel an Addendum at any time.

General Motors will endeavor to distribute new Motor Vehicles among its dealers in a fair and equitable manner. Many factors affect the availability and distribution of Motor Vehicles to

dealers, including component availability and available production capacity, sales potential in Dealer's Area of Primary Responsibility, varying consumer demand, weather and transportation conditions, governmental regulations, and other conditions beyond the control of General Motors. General Motors reserves to itself discretion in accepting orders and distributing Motor Vehicles, and its judgments and decisions are final. Upon written request, General Motors will advise Dealer of the total number of new Motor Vehicles, by allocation group, sold to dealers in Dealer's Market Area or Region during the preceding month.

## **6.2 Sale of Parts and Accessories to Dealer**

New, reconditioned or remanufactured automotive parts and accessories marketed by General Motors and listed in current Dealer Parts and Accessories Price Schedules or supplements furnished to Dealer are called Parts and Accessories. Orders for Parts and Accessories will be submitted and processed according to written or electronic procedures established by General Motors or other designated suppliers.

## **6.3 Prices and Other Terms of Sale**

### **6.3.1 Motor Vehicles**

Prices, destination charges, and other terms of sale applicable to purchases of new Motor Vehicles will be those established according to Vehicle Terms of Sale Bulletins furnished periodically to Dealer.

Prices, destination charges, and other terms of sale applicable to any Motor Vehicle may be changed at any time. Except as otherwise provided in writing or electronically, changes apply to Motor Vehicles not shipped to Dealer at the time the changes are made effective. Dealer will receive written or electronic notice of any price increase before any Motor Vehicle to which such increase applies is shipped, except for initial prices for a new model year or for any new model or body type. Dealer has the right to cancel or modify the affected orders by delivering written or electronic notice to General Motors within 10 days after its receipt of the price increase notice in accordance with procedures established by General Motors.

If General Motors offers any incentives to customers or dealers, and payment is conditioned upon the purchase or lease of a new Motor Vehicle, Dealer agrees to comply with the then current applicable policies and procedures in the General Motors Incentive Manual, as amended from time to time.

### **6.3.2 Parts and Accessories**

Prices and other terms of sale applicable to Parts and Accessories are established by General Motors according to the Parts and Accessories Terms of Sale Bulletin furnished to Dealer. Prices and other terms of sale applicable to Parts and Accessories may be changed by General Motors at any time. Such changes apply to Parts and Accessories not shipped to Dealer at the time changes become effective.

## **6.4 Inventory**

### **6.4.1 Motor Vehicle Inventory**

Dealer recognizes that customers expect Dealer to have a reasonable quantity and variety of current model Motor Vehicles in inventory. Accordingly, Dealer agrees to purchase and stock and General Motors agrees to make available, subject to Article 6.1, a mix of models and series of Motor Vehicles identified in the Motor Vehicle Addendum in quantities adequate to enable Dealer to fulfill its obligations in its Area of Primary Responsibility.

### **6.4.2 Parts and Accessories**

Dealer agrees to stock sufficient Parts and Accessories made available by General Motors to perform warranty repairs and policy adjustments and meet customer demand.

## **6.5 Warranties on Products**

General Motors warrants new Motor Vehicles and Parts and Accessories (Products) as explained in documents provided with the Products or in the Service Policies and Procedures Manual

EXCEPT AS OTHERWISE PROVIDED BY LAW, THE WRITTEN GENERAL MOTORS WARRANTIES ARE THE ONLY WARRANTIES APPLICABLE TO PRODUCTS WITH RESPECT TO DEALERS. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES OR LIABILITIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY LIABILITY FOR COMMERCIAL LOSSES BASED UPON NEGLIGENCE OR MANUFACTURER'S STRICT LIABILITY EXCEPT AS MAY BE PROVIDED UNDER AN ESTABLISHED GENERAL MOTORS PROGRAM OR PROCEDURE, GENERAL MOTORS NEITHER ASSUMES NOR AUTHORIZES ANYONE TO ASSUME FOR IT ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH PRODUCTS, AND GENERAL MOTORS MAXIMUM LIABILITY IS TO REPAIR OR REPLACE THE PRODUCT

## **ARTICLE 7. SERVICE OF PRODUCTS**

### **7.1 Service for Which General Motors Pays**

#### **7.1.1 New Motor Vehicle**

##### ***Pre-Delivery Inspections and Adjustments***

Because new vehicle delivery condition is critical to customer satisfaction, Dealer agrees to perform specified pre-delivery inspections and adjustments on each new Motor Vehicle and verify completion according to procedures identified in the Service Policies and Procedures Manual

#### **7.1.2 Warranty and Special Policy Repairs**

Dealer agrees to perform (i) required warranty repairs on each qualified Motor Vehicle at the time of pre-delivery service and when requested by

owner, and (ii) special policy repairs approved by General Motors. When the vehicle is returned to the owner, Dealer will provide owner a copy and explanation of the repair document reflecting all services performed

#### **7.1.3 Campaign Inspections and Corrections**

General Motors will notify Dealer of suspected unsatisfactory conditions on Products and issue campaign instructions. Dealer agrees to inspect and correct suspected unsatisfactory conditions on Products in accordance with the instructions. Dealer will also determine that campaign inspections and corrections have been made on new and used Motor Vehicles in its inventory prior to sale, and follow-up on Products on which campaigns are outstanding



General Motors may ship, and Dealer agrees to accept, unordered parts and materials required for campaigns. Upon campaign completion, Dealer will receive credit for excess parts and materials so shipped if they are returned or disposed of according to General Motors instructions.

**7.1.4 Payment for Pre-Delivery  
Adjustments, Warranty,  
Campaign and  
Transportation Damage  
Work**

For Dealer's performance of services, pre-delivery inspections and adjustments, warranty repairs, special policy repairs, campaign inspections and corrections, and transportation damage repairs, General Motors will provide or pay Dealer for the Parts and other materials required and will pay Dealer a reasonable amount for labor. Payment will be made according to policies in the Service Policies and Procedures Manual. Dealer will not impose any charge for such service on owners or users except where a deductible or pro-rata charge applies.

**7.2 Parts, Accessories, and Body  
Repairs**

**7.2.1 Warranty and Policy  
Repairs**

Dealer agrees to use only genuine GM or General Motors approved Parts and Accessories in performing warranty repairs, special policy repairs, and any other repairs paid for by General Motors, in

accordance with the applicable provisions of the Service Policies and Procedures Manual.

**7.2.2 Representations and  
Disclosures as to Parts and  
Accessories**

In servicing vehicles marketed by General Motors, Dealer agrees to disclose the use of recycled and non-General Motors parts and accessories as set forth in Article 5.1.1.

**7.2.3 Body Repairs**

Dealer agrees to provide quality body repair service for Motor Vehicles. Dealer can provide this service through its own body shop, or by arrangement with an alternate repair establishment approved by General Motors.

**7.2.4 Tools and Equipment**

Dealer agrees to provide and maintain on Dealership Premises essential service tools as required by General Motors, and such other tools and equipment as reasonably necessary to fulfill its responsibilities to properly diagnose and service Products. Dealer also agrees to allow General Motors or its designated representative to survey or inspect Dealer's tools and equipment to ensure that they are in good repair and proper calibration to enable Dealer to meet its service responsibilities. In the event a dispute arises from such a survey or inspection, General Motors personnel agree to discuss the matter with the Dealer in order to resolve the dispute.

## ARTICLE 8. TRAINING

Properly trained personnel are essential to the success of Dealer and General Motors, and to providing customers with a satisfactory sales and service experience. General Motors agrees to make available or recommend to Dealer product, sales, service and parts, accounting, business management, finance and insurance, and systems training courses for Dealer personnel. General Motors will make such training available through training sites, interactive distance learning, or other appropriate medium as determined by General Motors. General Motors will assist Dealer in determining training requirements and periodically will require that Dealer have personnel attend or participate in specific courses

held as conveniently as practicable. Dealer agrees to comply with any such reasonable training requirements and pay any specified training charges. General Motors will consult with the appropriate dealer council prior to determining the training courses or programs from which an individual Dealer's requirements under this Article may be established. Specific minimum service training requirements will be described in General Motors Service Policies and Procedures Manual.

General Motors will make available personnel to advise and counsel Dealer personnel on sales, service, parts and accessories, and related subjects.

## ARTICLE 9. REVIEW OF DEALER'S SALES PERFORMANCE

General Motors' willingness to enter into this Agreement is based in part on Dealer's commitment to effectively sell and promote the purchase, lease and use of Products in Dealer's Area of Primary Responsibility. The success of General Motors and Dealer depends to a substantial degree on Dealer taking advantage of available sales opportunities.

Given this Dealer commitment, General Motors will provide Dealer with a written report at least annually pursuant to the procedures then in effect evaluating Dealer's sales performance. The report will compare Dealer's retail sales to retail sales opportunities by segment in Dealer's Area of Primary Responsibility or Area of Geographical Sales and

Service Advantage, whichever is applicable. General Motors will provide a written explanation of the sales review process to Dealer. Satisfactory performance of Dealer's sales obligations under Article 5.1 requires Dealer to achieve a Retail Sales Index equal or greater than 100. If Dealer's Retail Sales Index is less than 100, Dealer's sales performance will be rated as provided in the General Motors Sales Evaluation process. General Motors expects Dealer to pursue available sales opportunities exceeding this standard. Additionally, General Motors' expectations of its sales and registration performance for a Line-Make in a particular area may exceed this standard for individual dealer compliance.

In addition to the Retail Sales Index, General Motors will consider any other relevant factors in deciding whether to proceed under the provisions of Article 13.2 to address any failure by Dealer to adequately perform its sales responsibilities. General Motors will only pursue its rights under Article 13.2 to address any failure by Dealer to adequately perform its sales responsibilities if General Motors

determines that Dealer has materially breached its sales performance obligations under this Dealer Agreement.

General Motors may modify the sales evaluation process from time to time and will consult with the appropriate dealer council before adopting such modifications.

## **ARTICLE 10. CAPITALIZATION**

### ***10.1 Net Working Capital***

The Capital Standard Addendum reflects the minimum net working capital necessary for Dealer to conduct Dealership Operations. Dealer agrees to maintain at least this level of net working capital. General Motors will issue a new Addendum if changes in operating conditions or General Motors guidelines indicate capital needs have changed materially.

### ***10.2 Wholesale Floorplan***

To avoid damage to goodwill which could result if Dealer is financially unable to fulfill its commitments, Dealer agrees to have and maintain a separate line of credit from a creditworthy financial institution reasonably acceptable to General Motors and available to finance the Dealer's purchase of new vehicles in conformance with the policies and procedures established by General Motors. The amount of the line of credit will be sufficient for Dealer to meet its obligations under Article 6.4.

## **ARTICLE 11. ACCOUNTS AND RECORDS**

### ***11.1 Uniform Accounting System***

A uniform accounting system facilitates an evaluation of Dealer business management practices and the impact of General Motors policies and practices. General Motors therefore agrees to maintain, and Dealer agrees to use and maintain records in accordance with a uniform accounting system set forth in an accounting manual furnished to Dealer. Dealer further agrees to submit to General

Motors data in a manner specified by General Motors and on a timely basis.

### ***11.2 Application for Payment***

Dealer also agrees to timely submit true and accurate applications or claims for payments, discounts or allowances, true and correct orders for Products and reports of sale and delivery, and any other reports or statements required by General

Motors, in the manner specified by General Motors, and to retain such records for at least two years

### ***11.3 Examination of Accounts and Records***

Dealer agrees to permit any designated representative of General Motors to access, examine, audit, and take copies of any of the accounts and records Dealer is to maintain under the accounting manual and this Agreement Dealer agrees to make such accounts and records readily available at its

facilities during regular business hours General Motors agrees to furnish Dealer with a list of any reproduced records

### ***11.4 Confidentiality of Dealer Data***

General Motors agrees not to furnish any personal or financial data submitted to it by Dealer to any non-affiliated entity unless authorized by Dealer, required by law, or in connection with judicial or administrative proceedings, or to proceedings under the Dispute Resolution Process

## **ARTICLE 12. CHANGES IN MANAGEMENT AND OWNERSHIP**

The parties recognize that customers and authorized dealers, as well as shareholders and employees of General Motors, have a vital interest in the continued success and efficient operation of General Motors dealer network Accordingly, General Motors has the responsibility of continuing to administer the network to ensure that dealers are owned and operated by qualified persons able to meet the requirements of this Agreement

### ***12.1 Succession Rights Upon Death or Incapacity***

#### ***12.1.1 Successor Addendum***

Dealer can apply for a Successor Addendum designating a proposed dealer operator and/or owners of a successor dealer to be established if this Agreement expires or is terminated because of death or incapacity. General Motors will execute the Addendum provided Dealer is meeting its obligations under this Agreement and under any Dealer

Agreement which Dealer may have with General Motors for the conduct of Dealership Operations at the approved location, and the proposed dealer operator is, and will continue to be, employed full-time by Dealer or a comparable automotive dealership, and is already qualified or is being trained to qualify as a dealer operator, and provided all other proposed owners are acceptable

Upon expiration of this Agreement, General Motors will, upon Dealer's request, execute a new successor addendum provided a new and superseding dealer agreement is executed with Dealer, and Dealer, the proposed dealer operator and dealer owners are then qualified as described above

#### ***12.1.2 Absence of Successor Addendum***

If this Agreement expires or is terminated because of death or incapacity and Dealer and General

Motors have not executed a Successor Addendum, the Dealer Operator or, if there is not a remaining Dealer Operator, the remaining dealer owners may propose a successor dealer to continue the operations identified in this Agreement. The proposal must be made to General Motors in writing at least 30 days prior to the expiration or termination of this Agreement, including any deferrals. If there are more than one dealer owners remaining, these persons may only propose a successor dealer if they can agree on such proposal.

#### ***12.1.3 Successor Dealer Requirements***

General Motors will accept a proposal to establish a successor dealer submitted by a proposed dealer operator under this Article 12.1 provided:

(a) the proposed successor dealer and the proposed dealer operator are ready, willing and able to meet the requirements of a new dealer agreement at the approved location(s)

(b) General Motors approves the proposed dealer operator and all proposed owners not previously approved for the existing Dealership Operations

(c) all outstanding monetary obligations of Dealer to General Motors have been satisfied

#### ***12.1.4 Term of New Dealer Agreement***

The dealer agreement offered a successor dealer will be for a three-year term. General Motors will notify the successor dealer in writing at least 90 days prior to the expiration date whether the successor dealer has performed satisfactorily and, if so, that General Motors will offer a new Dealer Agreement.

#### ***12.1.5 Limitation on Offers***

Dealer will be notified in writing of the decision on a proposal to establish a successor dealer submitted under Article 12.1 within 60 days after General Motors has received from Dealer all applications and information reasonably requested by General Motors. General Motors may condition its offer of a dealer agreement on the relocation of dealership operations to an approved location by successor dealer within a reasonable time. General Motors offer of a new dealer agreement under this Article 12.1 will automatically expire if not accepted in writing by the proposed successor dealer within 60 days after it receives the offer.

#### ***12.1.6 Cancellation of Addendum***

Dealer may cancel an executed Successor Addendum at any time prior to the death of a Dealer Operator or the incapacity of Dealer Operator. General Motors may cancel an executed Successor Addendum only if the proposed dealer operator is no longer qualified under Article 12.1.

#### ***12.2 Other Changes in Ownership or Management***

If Dealer proposes a change in Dealer Operator, a change in ownership, or a transfer of the dealership business or its principal assets to any person conditioned upon General Motors entering into a Dealer Agreement with that person, General Motors will consider Dealer's proposal and not arbitrarily refuse to approve it, subject to the following:

***12.2.1*** Dealer agrees to give General Motors prior written notice of any proposed change or transfer described above. Dealer understands that

if any such change is made prior to General Motors approval of the proposal, termination of this Agreement will be warranted and General Motors will have no further obligation to consider Dealer's proposal

**12.2.2** General Motors agrees to consider Dealer's proposal, taking into account factors such as (a) the personal, business, and financial qualifications of the proposed dealer operator and owners, and (b) whether the proposed change is likely to result in a successful dealership operation with acceptable management, capitalization, and ownership which will provide satisfactory sales, service, and facilities at an approved location, while promoting and preserving competition and customer satisfaction

**12.2.3** General Motors will notify Dealer in writing of General Motors decision on Dealer's proposal within 60 days after General Motors has received from Dealer all applications and information reasonably requested by General Motors. If General Motors disagrees with the proposal, it will specify its reasons. General Motors may request that Dealer submit such applications and information in writing or electronically

**12.2.4** Any material change in Dealer's proposal, including change in price, facilities, capitalization, proposed owners, or dealer operator, will be considered a new proposal, and the time period for General Motors to respond shall recommence

**12.2.5** General Motors prior written approval is not required where the transfer of equity ownership or beneficial interest to an individual is (a) less than ten percent in a calendar year, and (b) between existing dealer owners previously approved by General Motors where there is no change in majority ownership or voting control. Dealer agrees to notify General Motors within 30 days of the date of the change and to execute a new Dealer Statement of Ownership

**12.2.6** General Motors is not obligated to approve any proposed changes in management or ownership under this Article unless Dealer makes arrangements acceptable to General Motors to satisfy any indebtedness of Dealer to General Motors and other commitments of Dealer to General Motors

## **12.3 Right of First Refusal to Purchase**

### **12.3.1 Creation and Coverage**

If Dealer submits a proposal for a change of ownership under Article 12.2, General Motors will have a right of first refusal to purchase the dealership assets or stock and such other rights proposed to be transferred regardless of whether the proposed buyer is qualified to be a dealer. If General Motors chooses to exercise this right, it will do so in its written response to Dealer's proposal. General Motors will have a reasonable opportunity to inspect the assets, including real estate, and corporate records before making its decision

***12.3.2 Purchase Price and Other  
Terms of Sale***

***(a) Bona Fide Agreement***

If Dealer has entered into a bona fide written buy/sell agreement, the purchase price and other terms of sale will be those set forth in such agreement and any related documents, unless Dealer and General Motors agree to other terms

Upon General Motors request, Dealer agrees to provide all documents relating to the proposed transfer. If Dealer refuses to provide such documentation or state in writing that such documents do not exist, it will be presumed that the agreement is not bona fide

***(b) Absence of Bona Fide  
Agreement***

In the absence of a bona fide written buy/sell agreement, the purchase price of the dealership assets or stock and such other rights as proposed to be transferred will be determined by good faith negotiations by Dealer and General Motors. If agreement cannot be reached within a reasonable time, the price and other terms of sale will be established by arbitration according to the rules of the American Arbitration Association

***12.3.3 Consummation***

Dealer agrees to transfer the property by Warranty Deed, where possible, conveying marketable title free and clear of liens and encumbrances. The Warranty Deed will be in proper form for recording and Dealer will deliver complete possession of the property when the Deed is delivered. Dealer will also

furnish copies of any easements, licenses or other documents affecting the property and assign any permits or licenses necessary for the conduct of Dealership Operations

***12.3.4 Assignment***

General Motors rights under this section may be assigned to any third party ("Assignee"). If there is an assignment, General Motors will guarantee full payment of the purchase price by the Assignee. General Motors shall have the opportunity to discuss the terms of the buy/sell agreement with the potential Assignee(s)

General Motors rights under this Article are binding on and enforceable against any assignee or successor in interest of Dealer or purchaser of Dealer's assets or stock and such other rights as proposed to be transferred

***12.3.5 Transfer Involving Family  
Members and Dealer  
Management***

When the proposed change of ownership involves a transfer by a dealer owner solely to a member or members of his or her immediate family, or to a qualifying member of Dealer's Management, General Motors right of first refusal will not apply. An "immediate family member" shall be the spouse, child, grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer owner. A "qualifying member of Dealer's Management" shall be an individual who has been employed by Dealer for at least two years and otherwise qualifies as a dealer operator

### ***12.3.6 Expenses***

If General Motors exercises its right of first refusal, General Motors agrees to pay the proposed owner the reasonable expenses, including reasonable attorney fees, that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, and that are incurred by

the proposed owner in negotiating and implementing the contract for the proposed change in Dealer ownership before General Motors gives notice of its exercise of its right of first refusal. The proposed owner must provide a reasonable accounting and documentation of such expenses to receive such reimbursement.

## **ARTICLE 13. BREACHES AND OPPORTUNITY TO REMEDY**

### ***13.1 Certain Acts or Events***

The following acts or events, which are within the control of Dealer or originate from action taken by Dealer or its management or owners, are material breaches of this Agreement. If General Motors learns that any of the acts or events has occurred, it may notify the Dealer in writing. If notified, Dealer will be given the opportunity to respond in writing within 30 days of receipt of the notice, explaining or correcting the situation to General Motors satisfaction.

***13.1.1*** The removal, resignation, withdrawal, or elimination from Dealer for any reason of any Dealer Operator or dealer owner without General Motors prior written approval.

***13.1.2*** Any attempted or actual sale, transfer, or assignment by Dealer of this Agreement or any of the rights granted Dealer hereunder, or any attempted or actual transfer, assignment or delegation by Dealer of any of the responsibilities assumed by it under this Agreement contrary to the terms of this Agreement.

***13.1.3*** Any change, whether voluntary or involuntary, in the record or beneficial ownership of Dealer as set forth in the Dealer Statement of Ownership furnished by Dealer, unless permitted by Article 12.2.5 or pursuant to General Motors written approval.

***13.1.4*** Any undertaking by Dealer or any of its owners to conduct, either directly or indirectly, any of the Dealership Operations at any un-approved location.

***13.1.5*** Any sale, transfer, relinquishment, discontinuance, or change of use by Dealer of any of the Dealership Premises or other principal assets required in the conduct of the Dealership Operations, without General Motors prior written approval.

***13.1.6*** Any dispute among the owners or management personnel of Dealer which, in General Motors opinion, may adversely affect the Dealership Operations or the interests of Dealer or General Motors.



**13.1.7** Refusal by Dealer to timely furnish sales, service or financial information and related supporting data, or to permit General Motors examination or audit of Dealer's accounts and records

**13.1.8** A finding by a government agency or court of original jurisdiction or a settlement arising from charges that Dealer, or a predecessor of Dealer owned or controlled by the same person, had committed a misdemeanor or unfair or deceptive business practice which, in General Motors opinion, may adversely affect the reputation or interests of Dealer or General Motors

**13.1.9** Willful failure of Dealer to comply with the provisions of any laws or regulations relating to the sale or service of Products

**13.1.10** Submission by Dealer of false applications or reports, including false orders for Products or reports of delivery or transfer of Products

**13.1.11** Failure of Dealer to maintain the line of credit required by Article 10

**13.1.12** Failure of Dealer to timely pay its obligations to General Motors

**13.1.13** Refusal by Dealer to permit General Motors or any designated representative of General Motors to access, examine, audit, or take copies of any of the accounts or records Dealer is to

maintain under the accounting manual and this Agreement

**13.1.14** Any other material breach of Dealer's obligations under this Agreement not otherwise identified in this Article 13 or in Article 14

If Dealer's response demonstrates that the breach has been corrected, or otherwise explains the circumstances to General Motors satisfaction, then General Motors shall confirm this fact in writing to Dealer. If, however, Dealer's response does not demonstrate that the breach has been corrected, or explain the circumstances to General Motors satisfaction, termination is warranted and General Motors may terminate this Agreement upon written notice to Dealer. Termination will be effective 60 days following Dealer's receipt of the notice.

### **13.2 Failure of Performance by Dealer**

If General Motors determines that Dealer's Premises are not acceptable, or that Dealer has failed to adequately perform its sales or service responsibilities, including those responsibilities relating to customer satisfaction and training, General Motors will review such failure with Dealer.

As soon as practical thereafter, General Motors will notify Dealer in writing of the nature of Dealer's failure and of the period of time (which shall not be less than six months) during which Dealer will have the opportunity to correct the failure.

If Dealer does correct the failure by the expiration of the period, General Motors will so advise the Dealer in writing. If, however, Dealer remains in material breach of its obligations at the expiration of

the period, General Motors may terminate this Agreement by giving Dealer 90 days advance written notice.

## **ARTICLE 14. TERMINATION OF AGREEMENT**

### ***14.1 By Dealer***

Dealer has the right to terminate this Agreement without cause at any time upon written notice to General Motors. Termination will be effective 30 days after General Motors receipt of the notice, unless otherwise mutually agreed in writing.

### ***14.2 By Agreement***

This Agreement may be terminated at any time by written agreement between General Motors and Dealer. Termination assistance will apply only as specified in the written termination agreement.

### ***14.3 Failure to be Licensed***

If General Motors or Dealer fails to secure or maintain any license required for the performance of obligations under this Agreement or such license is suspended or revoked, either party may terminate this Agreement by giving the other party fifteen days written notice. Dealer may only conduct Dealership Operations if permitted by law.

### ***14.4 Incapacity of Dealer Operator***

Because this is a Personal Services Agreement, General Motors may terminate this Agreement by written notice to Dealer if Dealer Operator is so physically or mentally incapacitated that the Dealer

Operator is unable to actively exercise full managerial authority. The effective date of termination will be stated in such written notice and will be not less than three months after receipt of such notice.

### ***14.5 Acts or Events***

If General Motors learns that any of the following has occurred, it may terminate this Agreement by giving Dealer written notice of termination. Termination will be effective on the date specified in the notice.

***14.5.1*** Conviction in a court of original jurisdiction of Dealer, or a predecessor of Dealer owned or controlled by the same person, or any Dealer Operator or dealer owner of any felony.

***14.5.2*** Insolvency of Dealer, or filing by or against Dealer of a petition in bankruptcy, or filing of a proceeding for the appointment of a receiver or trustee for Dealer, provided such filing or appointment is not dismissed or vacated within thirty days, or execution by Dealer of an assignment for the benefit of creditors or any foreclosure or other due process of law whereby a third party acquires rights to the operation, ownership or assets of Dealer.